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By Fax and First Class Mail

July 6, 2001

Commission Chair Karen Getman
Commissioners Downey, Knox, Scott and Swanson
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Re: In Re: Olson (No. O-01-112)

Dear Commissioners:

We write in response to the draft opinion, In re Olson (O-01-112), which concludes that two City of Los Angeles ordinances – provisions recently adopted to provide full and timely disclosure by membership organizations of pertinent information when they opt to become involved in our City's municipal elections – are preempted by certain parts of the Political Reform Act. We write to underscore the importance of the disclosures required by these ordinances and to again emphasize the full significance of these provisions to the functioning of our City's comprehensive set of campaign reforms, including its matching public funds program. Our position is set forth in greater detail in our previous June 1, 2001, submission to you.

The City ordinances reflect the view that there is no principled basis for treating payments for "member communication" differently than any other spending in support of or opposition to a candidate for City office. In crafting these provisions, the City has sought both to bring parity to the treatment and consequences of all spending in our local races and to preserve our City's system of open and competitive elections in which candidates have reasonable incentives to participate in a matching funds program designed to curb unlimited campaign spending by ensuring that candidates have the ability to become aware of and respond to large amounts of independent spending in their races. These ordinances thus seek to satisfy several important interests critical to the operation of our City's election and matching funds system: (i) providing candidates with essential information relating to the lifting of the spending limit in their races, (ii) providing voters with full information before going to the polls about the range of sources and amounts spent in an attempt to influence their vote; and (iii) assuring the integrity of City campaigns and the electoral process.

The draft opinion places particular emphasis on a singular part of the two ordinances which requires disclosure of contributions made to membership organizations when those organizations voluntarily elect to participate in City races by sending communications to their members advocating support of or opposition to City candidates. At the same time, the draft opinion relegates to simply a footnote a key provision of the ordinances requiring those organizations that have spent significant sums to communicate with voters who are members of the organizations in regard to our local elections to notify the City Ethics Commission within 24 hours of spending more than $1,000 on one of those communications. Our ordinances also provide - again in language not discussed in any detail in the draft opinion - that all such spending will count toward the threshold amount that lifts the spending limits for candidates who voluntarily agree to limit their spending as part of the City's comprehensive public matching funds program. As we stated in our prior letter to the Commission, these provisions are essential to the proper operation of our matching funds program. Candidates who participate in the matching funds program and thus agree to limit their campaign spending are allowed by the Municipal Code to exceed the spending limit when a threshold amount of independent expenditures are made on behalf of any candidate in the same race. Without timely notification and like treatment of all independent spending, the objectives fostered by our City's system necessarily will be undermined.

The draft opinion also concludes that the requirements in the City's ordinances relating to the reporting of contributions to those political parties that opt to participate in our City's races are overbroad because they require the reporting of some contributions that may not have been used to support or oppose City candidates. To support that conclusion, the draft opinion states that a review of the reports that have been filed pursuant to the City's ordinances provide evidence that "not all contributions received this calendar year were spent on the Los Angeles elections." In fact, when one examines the amounts recounted in the draft opinion and spent by the parties on state candidates, it is clear that those sums constitute only a small fraction of the overall expenditures by the parties during the relevant period. Moreover, the reports filed by the parties demonstrate considerable spending on member communications during a period in which there were no state races but when candidates were campaigning for City office.

Finally, one must bear in mind that these reporting requirements are triggered *only if* the parties voluntarily elect to involve themselves in our City's municipal elections through expenditures beyond the levels specified in our ordinances and that the contribution information required is limited in time and tied to the dates of our local elections. Thus, in adopting these provisions, our City has sought to craft workable requirements that provide our voters and our candidates with timely and relevant information that cannot be easily evaded by obfuscating the intended purpose of a contribution close in time to our City's election.

In support of the only state interest identified in the draft opinion as a basis for preemption of our local reforms – the need for uniformity in reporting requirements – the draft opinion cites back to a process convened 17 years ago and concludes that the provision of the Act that resulted from that process (*e.g.*, Government Code § 81009.5) represents a "reasoned balance" between the need for disclosure and simplicity. The draft opinion does not, however, meaningfully address what uniformity and simplicity mean in actual practice, nor does it consider that the technology widely available and widely used today is very different than it was 17 years ago. The problems once associated with differing local disclosure rules simply are no longer relevant; indeed, neither the draft opinion nor the parties' submissions identifies any concrete or actual difficulties resulting from the implementation of the reporting requirements set forth in the ordinances (provisions akin to those with which the parties and others have complied in the past without incident). The current widespread use of computer and internet technology is a factor that must be given significant weight in applying a balance between competing policy interest, particularly when the legitimate interests of a local jurisdiction to conduct its elections is at issue.

For all these reasons, as well as the arguments set forth in the prior correspondence submitted by our Commission and the Los Angeles City Attorney's Office, we respectfully request that you reconsider the conclusions of the draft opinion.

Sincerely,

Miriam Krinsky /BF

Miriam A. Krinsky
President

LeeAnn Pelham /BF

LeeAnn M. Pelham
Executive Director